

# HOUSE BILL REPORT

## HB 1821

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**As Reported by House Committee On:**  
Financial Institutions & Insurance

**Title:** An act relating to the nature of coverage under the heating oil pollution liability protection act.

**Brief Description:** Modifying the heating oil pollution liability protection act.

**Sponsors:** Representative Kagi.

**Brief History:**

**Committee Activity:**

Financial Institutions & Insurance: 2/15/05, 2/16/05 [DPS].

**Brief Summary of Substitute Bill**

- Provides that an owner who has registered a heating oil tank for coverage with the Pollution Liability Insurance Act (PLIA) is not liable for a release from that tank if a subsequent owner fails to register that tank for coverage with the PLIA.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Santos, Schual-Berke, Serben, Simpson, Strow and Williams.

**Staff:** Cece Clynch (786-7168).

**Background:**

The Pollution Liability Insurance Agency (PLIA) mission is to make pollution liability insurance available and affordable to the owners and operators of heating oil tanks and underground storage tanks by offering reinsurance services to the insurance industry. A heating oil tank is a tank for space heating of a home or working space. By contrast, an underground storage tank is a commercial tank or a combination of tanks used to store an accumulation of petroleum.

The PLIA and its programs do not receive state general funds. Rather, funding comes from two sources: (1) a pollution liability fee imposed on dealers making sales of heating oil to a homeowner or other consumer which is deposited into the Heating Oil Pollution Liability Trust Account; and (2) an excise tax on the wholesale value of petroleum which is deposited

into the Pollution Liability Trust Account. If the costs and claims of the heating oil tank program exceed the amount contributed to that account, the law provides that the difference is to be paid out of the Pollution Liability Trust Account. If, on the other hand, there is a residue in the Heating Oil Pollution Liability Trust Account at the end of the calendar year, it is to be transferred to the Pollution Liability Trust Account.

Currently, an owner of a heating oil tank elects coverage. An owner of a heating oil tank which has had a prior release, spill, or leak is eligible for coverage under the heating oil tank program if the owner elects coverage and has a plan for proceeding with corrective action. If the owner later files a claim with the insurer, the owner has the burden of proving that the claim is not related to the prior release or spill.

The above programs and the PLIA are scheduled to expire on June 1, 2007.

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**Summary of Substitute Bill:**

An owner or operator who has registered a heating oil tank for coverage with the PLIA is not liable for a release from that tank if a subsequent owner fails to register that tank for coverage with the PLIA.

**Substitute Bill Compared to Original Bill:**

Heating oil tanks are not automatically covered under the PLIA. Coverage must still be elected and the tank registered with the PLIA.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) A homeowner may act responsibly and register a heating oil tank for coverage with the PLIA but, if the subsequent buyer does not register, the original homeowner may be pursued for contribution to the cleanup. This bill would provide automatic universal coverage which is a reasonable remedy for a serious problem. All owners of heating oil tanks pay the tax and all should benefit. There is a gap between the PLIA and the Model Toxic Control Act into which people can fall and this bill responds to that. It will help retirees and others selling their homes. Real Estate Form 17 doesn't recommend that a buyer elect the PLIA. It only indicates that there is an oil tank on premises. Most people would opt for the PLIA coverage if they only knew about it. The burden should be to opt out not to opt in. These owners are paying the tax already, they are just unaware of the PLIA program and of the fact that all they would need to do is register to be covered.

**Testimony Against:** (Original bill) Last year the Legislature amended the law to make the home heating oil program self-sufficient. This proposal would not be self sufficient. The costs of this proposal will need to be subsidized from the commercial program. Currently, all a homeowner needs to do to register is basically check a box. That triggers coverage and then those homeowners are in the system. There is not enough funding in the home heating oil program to cover the increased costs and concern was expressed with respect to the tipping language already in law which allows money collected from the commercial side to be used on the home heating side. While there is a reserve, this is not a "surplus" because the reserve is available for claims. A narrow amendment is suggested which would provide that if a person buys property and does not elect the PLIA coverage that person should not be able to go back to a prior owner who elected the PLIA to kick in for the cleanup. There should be a start date in the bill. Homeowners must take responsibility for preventing pollution. Support was expressed for requiring fiberglass tanks which cost \$700 more than steel tanks but come with a 30 year warranty. If coverage is made automatic, there should be a requirement included that homeowners pay a 10 percent copay.

**Persons Testifying:** (In support of original bill) Representative Kagi, prime sponsor; and Mark Champion.

(Opposed on original bill) Charlie Brown, Washington Oil Marketers Association and Pacific North West Oil Heat Council; Roger Dovel; Pollution Liability Insurance Agency; and Greg Hanon, Western States Petroleum Association.

**Persons Signed In To Testify But Not Testifying:** None.